Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Notice of Proposed Rulemaking Regarding an Interim Cap on High-Cost Universal Service Support for Competitive Eligible Telecommunications Carriers	:	WC Docket No. 05-337 CC Docket No. 96-45

REPLY COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO

BACKGROUND AND INTRODUCTION

On May 1, 2007, the Federal State Joint Board on Universal Service released a Recommended Decision regarding the Universal Service High-Cost fund (High-Cost fund). ("Recommended Decision", WC Docket No. 05-337, CC Docket No. 96-45) The Joint Board urged the FCC to take immediate action to impose an emergency cap on USF High-Cost funding to Competitive Eligible Telecommunications Carriers (CETCs). On May 23, 2007, the FCC issued a Notice of Proposed Rulemaking to establish an interim cap as described by the Joint Board. Initial Comments were filed June 6, 2007. Reply Comments are due June 21, 2007[1]. The Public Utilities Commission of Ohio hereby submits its reply comments in this matter.

[1] The original date for the submission of Reply Comments was June 13, 2007, but an 8 day extension was granted on June 12, 2007.

As the Ohio Commission noted in its initial comments, the USF High-Cost fund is growing at an explosive rate. The Ohio Commission believes that failing to respond swiftly and aggressively to the exponential growth of the fund will have dire consequences nationally, from which entities opposing an interim cap will not be exempt. The Ohio Commission once again urges the Commission to place an interim cap on the fund as outlined by the Joint Board.

DISCUSSION

A. The majority of commenters, across a broad range of interests, support a CETC cap.

State Commissions, incumbent wireline carriers, and even some wireless carriers support capping the growth of the High-Cost CETC fund as an interim measure. It is worth noting that both Verizon and AT&T (having both incumbent and competitive wireless operations in a mixture of urban and rural territories) support the cap as proposed by the Joint Board.[2]

B. The cap, as proposed by the Joint Board is an interim cap, and should remain as such.

While the majority of those commenting are in support establishing an interim CETC cap, others are totally opposed to a cap while reform issues are

[2] AT&T expresses some concern that the certification of additional CETCs could negatively impact planning by existing CETCs if support was to suddenly decline. As a result, AT&T proposes an additional cap on the ability of new CETCs to obtain any High-Cost support. This may be a reasonable option, as is discussed below, but the fact remains that AT&T supports the cap proposed by the Joint Board in full. Comments of AT&T at 3 – 10.

being worked out. There are also those in the middle, who support the "pause" that the cap will provide while the reform solutions are being created while expressing concerns that the "interim" cap will be extended. For example, the Idaho Public Utilities Commission and the Maine Public Utilities Commission[3] both express the concern that the cap may not be short-term and may be extended. The Ohio Commission shares this concern and is in favor adhering to the original timeframe proposed.

Extending the timeframe for the interim cap is a legitimate concern, considering how long the issues involving the USF have been under discussion. While the timeframe involved in the Joint Board's proposed process is challenging,[4] the Ohio Commission commends the Joint Board for establishing a rigorous timeframe for the reform.

Unfortunately, reforms of this magnitude bog down over time if not aggressively pursued. Choosing to extend the timeframe at the outset beyond the 18 months proposed by the Joint Board increases the likelihood that this docket will lose focus and momentum. The Ohio Commission encourages adherence to the proposed timeframe to keep the process moving forward. A brief extension can be taken up at a future date if it seems prudent at that time.

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[3] Comments of the Idaho Public Utilities Commission at 1-2 and Comments of the Maine Public Utilities Commission at 3.

[4] The original one week turnaround from initial to reply comments in the current NOPR was definitely a challenge, and the granted extension makes it only slightly less so.

That being said, efforts should be made to avoid extensions to the original proposed timeframe of the interim cap. The Ohio Commission agrees that competition could be adversely affected by restricting long-term funding to CETCs while working out the solutions. There are several states with low to moderate 2006 CETC funding levels. Ohio, along with other similarly situated states, had CETC funding at or near zero in 2006. Limiting the funding for an extended (or indefinite) period of time could severely limit the interest and ability of competitive companies to offer services that would otherwise be truly unavailable in those states' markets.

If one or more extensions became necessary, the Ohio Commission could support the Maine Public Utility Commission's modified cap proposal as a second step, at least in part. The Maine Commission "suggests capping the fund only in those states where growth has been excessive."[5] If the Commission deems an extension to be necessary as the process of reforming the USF High-Cost fund goes forward, part of that extension could be a re-adjustment to the cap mechanism to apply only in those states where there has been excessive growth in demand for CETC High-Cost funds. This additional step could help alleviate the concern of the cap becoming permanent should an extension be required.

The Maine Commission goes further to say that the cap to funding should also apply "where state commissions have not established

[5] Comments of the Maine Public Utilities Commission at 3.

mechanisms to ensure that all CETC support is used for rural build-out purposes."[6] It is laudable that Maine requires and monitors compliance that all the CETC support be used to build-out rural systems. But not all states have established measures in place, and many would be hard-pressed to create a system quickly. The Ohio Commission believes that Maine's suggested CETC funding requirement and compliance monitoring is better considered in the context of the larger USF reform discussion in which the development of accountability is an essential component.

Accountability for the use of High-Cost funds is a paramount consideration to maintain the long-term integrity of the USF. While not truly a form of accountability, the interim cap can be considered an interim "proxy" for accountability. One may not be able to keep a child's hands out of the cookie jar, but you can limit the number of "junk food" calories consumed by limiting the number of cookies in the jar.

C. The majority of wireless companies' comments is largely transparently self-serving, and attempt to gloss over certain realities.

The position taken by some wireless companies that the cap should apply across the board is misguided. In particular, Corr Wireless' airplane analogy, while vivid, ignores the realities of the Universal Service Fund. In Ohio's experience, Rural ILECs are hardly obese. Rather, Rural ILECs are among the most innovative and efficient parties in this discussion. Rural

[6] Comments of the Maine Public Utilities Commission at 2.

ILECs do carry a great deal of baggage, however, in the form of regulatory obligations (for example, the carrier of last resort and equal access obligations). Rural ILECs, unlike wireless companies, are *required* to build facilities *throughout* their service territories, regardless of cost effectiveness or revenue generation. The societal benefit of these regulatory obligations is why the High-Cost fund exists.

The suggestion that the cap should apply to ETCs as well as CETCs is also puzzling, since ETC High-Cost support is already subject to a cap.[7]

To further compound the problem, wireless carriers that are CETCs benefit from the USF twice. In the first instance, CETCs benefit from the fact that rural ILECs get USF support (and have both the carrier of last resort and equal access obligations). ILECs are more likely to have facilities available to connect wireless carriers' facilities to the PSTN. In the second instance, CETCs also receive direct USF High-Cost support, but have no carrier of last resort obligation, no equal access obligation, and, in many states, face only minimal monitoring for compliance with federal or state requirements for the use of the High-Cost funds.

[7] Comments Supporting Interim Cap on Portable CETC Support of The Western Telecommunications Alliance at 2.

D. Additional issues for consideration.

The Maine Commission expressed a concern that imposing the interim cap is likely to turn into an "extended moratorium,"[8] and would disadvantage states that closely monitor and make sure that the High-Cost support is used exclusively for rural buildouts. Maine posits that project delays would occur because of the uncertainties produced by capping the funds, which could impair reasonable fund growth for real facilities projects.[9] Without speaking to the likelihood or extent of the problem, the Ohio Commission suggests that this issue could be mitigated if no further CETCs were certified in the interim, or if newly certified CETCs were prohibited from drawing on the High-Cost fund. Under these circumstances, currently certified CETCs would likely continue to receive approximately the funding that they received in 2006.

Parenthetically, the Ohio Commission suggests that the accountability structures in Maine may be a good model for a uniform standard of accountability for receiving High-Cost funds.

Similarly, the wireless carrier Unicom favors the recommended cap, with some exceptions granted to CETCs who can provide verifiable cost data. Unicom recognizes the difficulty and expense of serving remote areas as it is the only wireless carrier operating in 16 rural communities in Alaska.[10] This

[8] Comments of the Maine Public Utilities Commission at 3.

[9] *Id.* at 2

[10] Comments of Unicom Inc. at 1.

is a reasonable proposal, and a significant improvement in the USF High-Cost mechanism that deserves to be considered in the context of USF High-Cost reform. Unfortunately, it cannot reasonably be implemented in the context of this interim cap.

E. The consequences of failing to impose an interim cap on the CETC High Cost fund far outweigh any negative effects of the cap.

The Ohio Commission urges the FCC to apply the cap as proposed by the Joint Board so the parties can take the time allotted to propose ways to fix the Universal Service fund, before it spirals out of control and the goal of universal service becomes associated with bloated costs and excessive taxes on end users

As Windstream pointed out, "…the current high-cost mechanism continues to grow at unsustainable rates, thereby placing in peril the viability of the universal service fund."[11] The consequence of a failed USF will affect all carriers and all customers.

There are practical reasons for immediately stopping the excessive growth of the High-Cost fund. The USF is based on intrastate toll surcharges. But demand for toll minutes has declined steadily between 2000 and 2004,[12] indicating a greater degree of demand elasticity, as communications moves to other, non-traditional, services. As USF

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[11] Comments of Windstream Communications, Inc. at 2.

[12] Federal and State Joint Board on Universal Service, *2005 Universal Service Monitoring Report*, Table 8.3.

contributions increase, alternative services may well attract more large toll end users to shift to alternative providers. The resulting loss of these toll minutes would cause a growing fund to draw from a shrinking contribution base, exacerbating the problem into a death spiral. Unless the growth of the High-Cost fund is curtailed in short order, CETCs may well find themselves killing the goose that laid the golden egg.

CONCLUSION

The Ohio Commission thanks the FCC for the opportunity to be heard on this matter. We believe that the benefits of imposing a cap on the CETC high cost fund far outweigh the risks of letting the fund grow out of control while we try to fix it on the fly. The risk of not capping the fund is to jeopardize universal service. Capping the CETC High-Cost fund and imposing a moratorium on certifying new CETCs will not unduly harm any party, and will certainly protect the fund itself while we fix it. Just as important, it will protect the end user's trust, investment, and benefit in supporting a universal service policy for the public good.

Respectfully submitted,

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